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No. 89-1219

In The

Supreme Court of the United States

October Term, 1989

CYNTHIA M. COLVERT (now GILBERT)

Petitioner,

vs.

JAMES ROBERT COLVERT, JR.

Respondent.

OPPOSITION BRIEF FOR PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT

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QUESTIONS PRESENTED FOR REVIEW

1. In the actual trial on the substantive merits of a civil case involving fundamental rights, does the Trial Judge's reception, in camera, and in the involuntary, judicially imposed absence of the litigants and even of their counsel, of the unsworn and secret testimony of a witness followed by the Judge's sealing the in camera transcript so as to deny the litigants knowledge of even the substance of the unsworn secret testimony, violate procedural due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

2. Phrased more precisely in the context of this case, does the practice of a Trial Judge is presiding over a judicial child custody contest between two divorced parents, of entertaining in camera secretly and not under oath, the testimony of the minor child himself, and thereafter withholding from the parents even so much as a summary of the substance of the child's testimony, violate the parent/litigants' right to due process of law?

3. In more particular, does this in camera interview practice, whether in a custody contest or in any other type of a civil case's actual trial on the merits, violate the litigants' due process rights to an open and public trial, confrontation and cross-examination of the testifying child and rebuttal of the child's testimony by the parents' own independent testimony and evidence?

QUESTIONS PRESENTED FOR REVIEW – Continued

4. Does the essential substance of the specific procedural guarantees of the Bill of Rights apply to civil proceedings in the State Courts by virtue of the due process guarantee of the Fourteenth Amendment?

5. Are the due process violations mentioned above rendered harmless because of the existence of other evidence assertedly consistent with the Trial Judge's decision in such a trial?

6. Is the best interests of the child test, either on it's face or as applied to the facts of this case, violative of due process by reason of vagueness and overbreadth?

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OPPOSITION BRIEF FOR PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT

The Respondent, James Robert Colvert, Jr., for opposition to Petitioner's Petition for a Writ of Certiorari, responds as follows:

THE DECISIONS BELOW

In April, 1986, some eleven years subsequent to a divorce action, Respondent filed a Motion to modify custody of the parties' minor child (age thirteen) in the District Court of Oklahoma County, Oklahoma in Case No. JFD-75-1675 titled James R. Colvert, Jr., Plaintiff, vs. Cynthia M. Colvert, Defendant.

The Motion was granted by the District Court of Oklahoma County on September 17, 1986. The Trial Court's pronouncement of judgment and the Journal Entry of Judgment are set out in Appendix "A" and "B" respectively in Petitioner's Petition for Writ of Certiorari.

Petitioner, likewise, has set out in her Petition for Writ of Certiorari the decision of the Intermediate Court of Appeals of the State of Oklahoma, Division III, in Appeal No. 67,525 on January 24, 1989, affirming the Trial Court's ruling (Petitioner's Appendix "C"), the denial of Petitioner's Petition for Rehearing by the Court of Appeals on March 3, 1989 (Petitioner's Appendix "D"), and the denial of the Supreme Court of the State of Oklahoma of Petitioner's Petition for Writ of Certiorari on November 1, 1989 (Petitioner's Appendix "E").

Although Petitioner acknowledges that under Oklahoma practice further Petitions for rehearing on reconsideration are not allowed, this Honorable Court should be aware that in a consolidated appeal filed by Petitioner in the Supreme Court of the State of Oklahoma on January 16, 1990 in Cases numbered 70991, 73484, 74024 and 74251 (consolidated under Case No. 70991), Petitioner has attacked the Trial Court's modification of custody decree albeit collaterally on constitutional grounds and has asserted that said attack is proper in the Oklahoma Supreme Court. The basis of the last mentioned appeal currently pending in the Oklahoma Supreme Court stems from the Trial Court's award of child support from Petitioner following the change of custody and a subsequent finding of Contempt of Court against Petitioner for nonpayment of support and direction of collection of that support by the Trial Court.

JURISDICTION TO ENTERTAIN THIS PETITION

Although Respondent agrees with Petitioner that Petitioner has exhausted her State Court remedies, Respondent feels compelled to advise this Court that in "The Decisions Below" heading of the latest Brief filed in the Oklahoma Supreme Court, Petitioner has attacked the underlying modification decree on due process challenges in the Oklahoma Supreme Court as recently as January 16, 1990. This attack was in conjunction with her attack on child support and in defense of her being found in Contempt of Court and her objection to collection proceedings to enforce the child support Order. This appeal is currently pending before the Oklahoma Supreme Court on this constitutional attack. In that Brief, Petitioner alleged that "these arguments (constitutional issues) have been rejected, albeit non-finally, by all three levels of the Oklahoma Civil Judiciary. Proposition I hereto will urge, however, that these constitutional challenges may nevertheless be raised anew in these instant consolidated appeals". Perhaps this latest appeal to the Oklahoma Supreme Court raises issue to the timeliness of this Petition for Writ of Certiorari.

If that not be the case, then Petitioner is invoking jurisdiction of this Court to review constitutional due process under 28 U.S.C. 1257(a), 28 U.S.C. 2102(c) and U.S. Supreme Court Rule No. 20.2.

LEGAL PROVISIONS INVOLVED

Respondent disputes the relevancy of that portion of the Sixth Amendment to the United States Constitution as

it pertains to criminal prosecutions cited by Petitioner. The instant matter pertains strictly to modification of child custody. Respondent recognizes issues of confrontation of witnesses and open Court hearings as being relevant to the Trial Court's in camera procedure held without the parties or their counsel.

The Fourteenth Amendment would be relevant as it pertains to a due process argument as recited by Petitioner.

Likewise, Section 1277.1 to Title 12 of the Oklahoma Statutes, 1986 Supp. (now renumbered as 43 O.S.A. 113) as set out by Petitioner in relevant parts and as hereafter repeated, is proper:

> "In any action for divorce, legal separation, or annulment in which a court must determine custody or limits of or period of visitation, the child may express a preference as to which of its parents the child wishes to have custody. The Court may determine whether the best interest of the child will be served by the child's expression of preference as to which parent should have custody or limits of or period of visitation rights of either parent. If the court so finds, the child may express such preference or give testimony. The court may consider the expression of preference or other testimony of the child in determining custody or limits of or period of visitation. Provided, however, the court shall not be bound by the child's choice and may take other facts into consideration in awarding custody or limits of or period of visitation.
>
> If the child expresses a preference or gives testimony, such preference or testimony may be taken by the court in chambers, with or without the parents or other parties present, at the

> court's discretion. If attorneys are not allowed to be present, the court shall state, for the record, the reasons for their exclusion. At the request of either party, a record shall be made of any such proceeding in chambers."

Petitioner, in including the "relevant" part of that Statute, has omitted the sentence "the court may determine whether the best interest of the child will be served by the child's expression of preference as to which parent should have custody or limits of or period of visitation rights of either parent". Also see Title 43 O.S., Section 109a (previously 12 O.S. 1275.4).

STATEMENT OF MATERIAL FACTS

A. THE PROCEDURAL DUE PROCESS ISSUES

The relevant material facts should commence with Respondent's filing his Motion to modify custody on April 14, 1986 to seek custody of the parties' thirteen year old son (the child turned fourteen in December, 1986 and will reach majority in December, 1990). Respondent had alleged substantial and material changes of condition since Petitioner was granted custody of the child in the original Decree of Divorce in 1976, among these being:

1. That the child, a boy, had reached the age of thirteen and that his developmental needs would be best served by changing custody to his father; (supported by Transcript, Page 122)
2. That the respective parties' marital status had changed since the Decree of Divorce; (supported by Transcript, Page 39)

3. That the father's employment status had changed; (supported by Transcript, Page 39)
4. That the child had stated a preference to reside with the father and that a refusal would cause the child emotional and psychological difficulties; (Petitioner's expert witness)
5. That the home atmosphere and neighborhood environment of the father's was superior; (supported by Transcript, Pages 30, 31, 33, 104, 105, 106-109, 125)
6. That the child's education would be superior (the parties lived in separate cities);
7. That it would be in the best interests of the child to change custody to the father. (The Trial Court so found) (Transcript, Page 126)
8. That a substantial, material change of condition which directly affects the temporal, mental and moral welfare of the child exists.

The Petitioner, at the trial level below, among other things, responded that the best interest of the child would be served by leaving custody with his mother.

The matter commenced for trial on the merits on September 15, 1986, and after testimony of several witnesses including the parties, two psychologists, evidence being presented and an in camera interview of the minor by the Trial Judge outside the presence of both parties and their respective counsel, the Trial Court rendered it's decision on September 17, 1986.

As contained in Appendix "A" of Petitioner's Petition for Writ of Certiorari, the Trial Court found "many permanent, substantial and material changes of condition". In naming some, the Court discussed that both

parties had remarried, both parties have had additional children come into the family, both parties have apparently progressed financially and socially in the community, that the minor child has reached the age of reason and that the child has expressed that he has more quality free time spent with his father and that the child has expressed the clear, unequivocal desire to live with his father from the first minute to the last minute and it was unshakable. The Court did not find any undue pressure by the father for the boy to state his preference but rather stated the boy feels pressure from both sets of parents.

Upon the Court's finding of permanent, substantial and material changes of condition, the Court found that it was within the best interests of the child to award custody of the child to his father (Respondent).

The issues of finding of permanent, substantial and material changes of condition warranting the change of custody together with the attendant issue of the best interests of the child have been fully litigated in the Oklahoma Courts at both Trial and Appellate levels. It is a given that the Oklahoma Courts have found that the Trial Court complied with Oklahoma Law on those issues by the written decision of the Court of Appeals of Oklahoma and the subsequent denial of rehearing by the Court of Appeals and the Oklahoma Supreme Court's denial of Petitioner's Petition for Writ of Certiorari.

This leads us to the central issue of this Petition for Writ of Certiorari, namely the in camera hearing by the Trial Judge with the child in the absence of the parties and their respective counsel. The Trial Court requested and received proposed questions from the parties to be

asked by the Judge in the in camera hearing. The Trial Court, after a heated trial of the case which included several witnesses and two psychologists, found it in the best interests of the child to conduct such a hearing. To prevent the child from becoming "ill at ease" (Transcript, Pages 215-217). Whether this was an assumption on behalf of the Judge as asserted by Petitioner or not, it was well within the Trial Court's discretion.

As this Honorable Court is well aware, the issue which confronted the Trial Court was a balancing of constitutional due process standards against what the Trial Court perceived as the best interests of the child in the State's capacity of parens patriae for the protection of the child. The substantial changes of condition previously listed and observed by the Trial Court was extensively testified to before the in camera hearing. The child, as testified by Respondent's psychologist, had articulated to the doctor and everyone else including the Petitioner herein, his preference to live with his father (Transcript, Page 121).

The Trial Court advised the parties of the child's desire not to have the particulars of the in camera conversation revealed to the parties. The Trial Court being sensitive to the predicament of a child choosing one parent over another assured the child of the protection of the record prior to his questioning. The Trial Court's action was an attempt to relieve the pressure on the child and to determine the basis of the child's preference within those parameters. The Trial Court summarized his conversations with the child by advising the parties that the child expressed the clear, unequivocal desire to live with his

father, that he did so from the inception of their conversation and his preference was unshakable. The Trial Court found no undue pressure for the child's decision that could have acted to unfavorably sway the child from one parent to the other outside of what the Court perceived as normal pressure from both parents in a divorce situation. The Court advised the parties that the child stated he had spent more quality free time with his father. The Court stated in his decision, that in fact, the child had reached the age of reason.

The Trial Judge, being the impartial trier of facts, was in the position to decide the matter without the emotional factor obviously affecting the parties to the action. Contrary to the position of Petitioner, the Trial Court took ample time with the child and was not struck by what Petitioner perceived as an "utterly astounding 'coached' testimony" (an obvious and candid opinion from a mother or any party who has lost a hard fought custody battle). Again, the expected statement of preference of the child in this instant case certainly came as no shock to any of the parties. The child had long made his intentions known to the parties and the witnesses called before the Trial Court's in camera hearing.

B. THE SUBSTANTIVE DUE PROCESS ISSUE

Petitioner asserts a violation of due process by reason of the vagueness and over-breadth of the "best interests of the child test". The Trial Court used a two prong test in determining the modification of custody, namely where there had been a substantial material change of condition

and, that test being met, whether a modification would be in the best interests of the child.

Contained in the *Gibbons v. Gibbons* case (Okla. 1968) 442 P.2d 482, the Oklahoma Supreme Court referred to the case of *Young v. Young* (Okla. 1962) 383 P.2d 211 which held:

> "In a proceeding to modify provisions of an order relating to custody of child, burden of proof is upon applicant to show a substantial change in conditions since entry of order sought to be modified which bear directly upon welfare *and best interest of child . . .* " See *Ness v. Ness* (Okla. 1960) 357 P.2d 973,975 and *Stanfield v. Stanfield* (Okla. 1960) 350 P.2d 261.

The case of *Boatsman v. Boatsman* (Okla. 1985) 697 P.2d 516 cited by Petitioner, stated that both *Gibbons* (supra) and *Wells v. Wells* (Okla. 1982) 648 P.2d 1223 contained the proper test of proof of change of circumstances leading to the conclusion that the best interest of the child would be served by changing custody. The *Boatsman* case went further to state that ultimately all child custody matters must be determined on the best interest of the child. In *Boatsman*, the Court found the moving party had not demonstrated sufficient grounds for modification i.e. permanent substantial change of conditions.

Both *Gibbons* and *Boatsman* were decided prior to Oklahoma's preference of child statute found at 12 O.S. Section 1277.1 (now 43 O.S. Section 113).

The fact of the matter is that both the permanent substantial material change of conditions and the best interest of the child as found by the Trial Court in the

instant case was upheld by all appellate levels in the State of Oklahoma, either by opinion (Court of Appeals) or by tacit approval (denial of rehearing by Court of Appeals, denial of Petition for Certiorari by the Oklahoma Supreme Court).

The Oklahoma Court of Appeals stated "ultimately the Trial Court's determination of best interests of children will not be disturbed absent a showing of abuse of discretion. (*Gorham v. Gorham*, 692 P.2d 1375, 1378). We have reviewed the record and briefs, and find that Appellant has failed to demonstrate how the Trial Court's adjudication of custody is contrary to the child's best interests".

RESPONSE TO PETITIONER'S REASONS FOR GRANTING THE WRIT

PART A. THE IN CAMERA INTERVIEWING ISSUE

The Trial Court's in camera examination of the child balancing the State's parens patriae responsibility with the constitutional due process argument of right to an open and public trial; the right to confront and cross-examine adverse witness; and the right of rebutting that witness' testimony by independent evidence, did not constitute error to which this Court should afford review.

1. A STATE COURT . . . HAS DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT

The exact issue involving the State Court's private in camera interrogation of a minor child as it relates to

violations of due process constitutional requirements has not been decided by this Court and is not in conflict with applicable decisions of this Court.

This Court has recognized instances of exigent and necessary deviations from a strict construction of the Constitution when faced with a balancing of needs, whether it be in free speech, right to confront witnesses and right of assembly, capital punishment and abortion, to name a few.

a. OPEN AND PUBLIC TRIAL

Petitioner's cases cited under this heading all involve a relationship to criminal law. The case of *Globe Newspaper Co. v. Superior Court* (1982) 457 U.S. 596, 606-607, involved the exclusion of the press from a criminal trial in which a minor was the victim of a sexual assault. The Supreme Court ruled the press was entitled to be present at the trial. Justice O'Conner, writing a separate concurring opinion, stated that the decision carried no implication outside the context of criminal trials. Further, she recognized the possibility of a compelling government interest which could limit this First Amendment right. See *Brown v. Hartlage,* 456 U.S. 45, 53-54.

b. CONFRONTATION AND CROSS-EXAMINATION

Petitioner cites four cases under this heading involving a criminal case, a public utility case, a termination of welfare benefits case and a case involving the revocation of government clearance for a government employee. In

the criminal case, *Coy v. Iowa,* (1988) ___ U.S. ___, 101 L.Ed.2d 857 in which this Court ruled a minor child the victim of a crime, could not be screened from the accused, the Court did state that the right of confrontation of witnesses at trial is not an absolute right. Rather, the Court stated it must be balanced by the furtherance of an important public policy.

c. REBUTTAL

Petitioner cites two cases under this heading involving a 1912 reduction of railway rates by *The Interstate Commerce Commission ICC v. Louisville & Nashville R.R. Co.,* (1913) found at 227 U.S. 88, 33 S.Ct. 185, and a bankruptcy case involving the valuation of farm land, *Canton v. Kubler,* (1943) 320 U.S. 243, 246-247.

The precedents thus far cited by Petitioner are certainly not persuasive as to find a denial of due process in the instant case where a "compelling government interest" was acknowledged to exist by the Trial Judge not to subject the minor child to the embarrassment of confrontation by his parents.

2. A STATE COURT OF LAST RESORT HAS DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH THE DECISIONS OF OTHER STATE COURTS OF LAST RESORT

a. THE CONFRONTATION/CROSS-EXAMINATION AND THE OPEN TRIAL

Petitioners reference to 99 A.L.R.2d 954 (1965) article "propriety of court conducting private interview with

child in determining custody and the annotations contained therein does reflect a difference of opinion among the several States". Certainly this is not totally to be unexpected. It is not uncommon for there to exist a majority view and a minority view. That annotation deals with the questions whether, and under what conditions, a Court in making or modifying an award of custody of a minor, may conduct a private interview with the child.

The legal position that all evidence must be introduced in open Court has given way in several jurisdictions on question of custody to alleviate the pressure on the minor. The emphasis by those jurisdictions allowing private interviews of the minor, are the enlightened jurisdictions guarding the best interests of the child. Some of the States which have allowed such an interview include California (*Jenkins v. Jenkins*, (1954) 269 P.2d 908); Idaho (*Krieger v. Krieger*, 81 P.2d 1081 (1938), *Strain v. Strain*, 523 P.2d 36); Illinois (*Oakes v. Oakes*, (1964) 195 N.E.2d 840 (lead case of the ALR Annotation)); Indiana (*Remarriage of Saunders*, (1986) 496 N.E.2d 419); Kentucky (*Parker v. Parker*, 467 S.W.2d 595); Louisiana (*Diggs v. Tyler*, (1988) 525 So.2d 1263, *Watermeier v. Watermeier*, 462 So.2d 1271,1275, *LeGrand v. LeGrand* (1984) 455 So.2d 705); Maryland (1983) *Shapiro v. Shapiro*, 458 A.2d 1257; Michigan (*Lesauskis v. Lesauskis*, (1984) 314 N.W.2d 767); Montana (*Bailey v. Bailey*, (1979) 603 P.2d 259); New York (*People ex rel Kessler v. Cotter*, (1955) 136 N.Y.S.2d 515, *Lincoln v. Lincoln*, 247 N.E.2d 659, *Lamonte v. Lamonte*, 327 N.Y.S.2d 130); also the States of North Carolina, Tennessee, Washington, Wisconsin and Wyoming have recognized the private interview with certain modifications whether excluding the parents but including their respective counsel or by disclosing to

the parties the substantive context of the private interview.

The *Oakes* case (supra) explains the rationale for such private interviews as follows:

> " . . . the acrimonious atmosphere in which a child is required to state in open court his preference as to custody is well known. Often the primary concern, the welfare of the child, is lost in the violent charges and counter charges of the contesting parties. This atmosphere is heightened when the contesting parties or relatives are present in the courtroom.
>
> To have a child face such an array of belligerence and state on which side his preference lies is inhuman and, for judicial purposes useless. Hatred and revenge as a rule possess the contesting parties."

Citing the case of *In the County of McLean v. Humphreys*, 104 Ill. 378, 383, a 1982 case, the *Oakes* Court stated:

> "It is the unquestioned right and imperative duty of every enlightened government in its character of parens patriae to protect and provide for the comfort and well-being of such of its citizens as by reason of infancy . . . are unable to take care of themselves. The performance of this duty is justly regarded as one of the most important of governmental functions and all constitutional limitations must be so understood and construed as not to interfere with its proper and legitimate exercise."

The case of *Rayer v. Rayer* (Colorado 1973) 512 P.2d 637, held that the institution of a custody proceeding immediately activated the Court's parens patriae status. Such proceedings are not true adversary proceedings but

rather places the issue of the best interests of the child before the Court and this is the paramount issue.

The in camera hearing has been adopted under the Uniform Marriage and Divorce Act, Section 404(a).

In the instant case, the Trial Court's procedure was also in compliance with the holding of *Fleishman v. Walters*, 336 N.Y.S.2d 511, which required a sealed transcript of an in camera hearing to be made available in case of appellate review.

b. THE SEPARATE PROBLEM OF REBUTTAL

Contrary to the arguments of Petitioner, Respondent would state that the Trial Court did summarize the statements of the minor and the basis for the minor's preference as previously set out in this Brief.

The in camera hearing simply is not the same as the "shielding" of a victim from a criminal defendant.

Furthermore, the in camera hearing could very well be regarded as superfluous to the entire decision-making process of change of custody in the instant case. The record contained ample evidence to warrant a discretionary modification of custody prior to the in camera hearing. The child's preference was known and testified to in open Court by the Respondent and both expert psychiatric witnesses before the in camera hearing. See *M.D. v. C.D.*, (1985 MO.APP) 641 S.W.2d 406.

The substance of the child's testimony was divulged. *Rose v. Rose* (W.Va. 1986) 340 S.E.2d 176, 179, *Muraskin v.*

Muraskin, (N.D. 1983) 336 N.W.2d 332, 335, *Lesauskis v. Lesauskis,* 314 N.W.2d 767.

c. THE DECISIVE ISSUES NARROWED

This category raised by Petition truly sheds no new-light on this matter. Petitioner attempts to dispel the practice of in camera questioning of the child as an outcrop of "modern psychiatry" infringing on due process. Respondent maintains it is the enlightened approach and it's rationale as stated in the *Oakes* case (supra) supports the parens patriae position of the Trial Court in protecting and serving the best interests of the child.

3. A STATE COURT . . . HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT

There are no compelling reasons why this Court should exercise it's discretion and review this matter on certiorari. There is nothing unique or unusual about the facts. Nor is there a valid reason for this Court to federalize the States' custody procedures. Each State being in the position of parens patriae are better able to formulate procedures for child custody.

"A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor". Rule 17.1, Rules of the Supreme Court of the United States. There exists no special and important reasons in the instant case for such a review.

Custody proceedings are equally important to men as they are to women. Due process has not been "balanced" out of the scales of domestic justice. Rather, domestic justice requires that the Trial Court protect the children. In fact, they become wards of the State in custody proceedings. Their interests are of paramount importance to the Courts.

The authors of "Child Custody and Visitation Law and Practice", Section 10.02[1] [c] recognize that "approximately one-third of the states do not enumerate specific factors in their statutes" as guidelines for the best interest of the child. Rather, they give the Trial Court a broad directive that custody is to be determined by the best interest of the child test. Oklahoma is one of those States.

PART B. THE "BEST INTERESTS OF THE CHILD" ISSUES

The Trial Judge in this custody matter sat as an equity Court. As such, he was the ultimate trier of fact and applier of the law to those facts.

After finding a permanent, substantial, material change of condition, he was charged with determining what would be in the best interests of the child. Such a test is not determined as an exact science, however, that decision comes with the territory of being a Domestic Relations Judge.

The best interests of the child is the second prong to a two-prong test. The finding of a change of condition must impact on the welfare of the child to the extent that the

Judge finds it is in the child's best interests for a modification. Scholars have found the same in determinacy of this standard as argued by Petitioner, facilitates individualized case treatment and permits judges to give expression to changing values (see Finlay, "Judicial Discretion in Family and Other Litigation", 2 Monash U.L. Rev. 221 (1976)).

CONCLUSION

The Petition for Certiorari should be denied on the basis of the untimeliness of the Petitioner since the Petitioner has attacked the modification by an appeal to the Oklahoma Supreme Court involving post-modification orders of the Trial Court i.e. child support and contempt, and that is currently pending.

A just and fair result was reached at the trial level and one which was richly supported by the evidence.

There is no compelling interest in this matter to warrant the granting of a Writ of Certiorari.

This Court should apply the middle level or intermediate scrutiny test. The actions of the Oklahoma Trial Court bare a rational relationship to a legitimate governmental end i.e. the protection of the minor child (see *Craig v. Boren*, 429 U.S. 190 (1976)).

The minor child shall reach the age of majority in December, 1990 which shall render this matter, for all practical purposes, moot.

Respectfully submitted,

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